

---

**SUBSTITUTE HOUSE BILL 2179**

---

**State of Washington                      59th Legislature                      2005 Regular Session**

**By** House Committee on Technology, Energy & Communications (originally sponsored by Representative Morris)

READ FIRST TIME 03/04/05.

1            AN ACT Relating to the resolution of disputes between electrical  
2 suppliers regarding electrical service to customers; amending RCW  
3 36.70A.280; and adding a new chapter to Title 80 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.** The purpose of this chapter is to promote  
6 harmony among and between electric suppliers furnishing electricity  
7 within the state of Washington, discourage duplication of electric  
8 facilities, encourage efficiencies in the distribution and delivery of  
9 electricity, reduce or eliminate safety hazards associated with  
10 overlapping electric facilities and service lines, actively supervise  
11 certain conduct of electric suppliers as it relates to this chapter,  
12 stabilize the territories and customers served with electricity by such  
13 electric suppliers, and provide a means for resolving disputes relating  
14 to the provision of new electric service and customers switching from  
15 one electric supplier to another.

16            NEW SECTION.    **Sec. 2.** The definitions in this section apply  
17 throughout this chapter unless the context clearly requires otherwise.

1 (1) "Investor-owned utility" means any privately owned public  
2 service company engaged in the business of distributing electricity to  
3 one or more retail electric customers in the state.

4 (2) "Consumer-owned utility" includes a municipal electric utility  
5 formed under Title 35 RCW, a public utility district formed under Title  
6 54 RCW, a cooperative formed under chapter 23.86 RCW, and a mutual  
7 corporation or association formed under chapter 24.06 RCW, engaged in  
8 the business of distributing electricity to one or more retail electric  
9 customers in the state.

10 (3) "Electric supplier" means any investor-owned utility or  
11 consumer-owned utility.

12 (4) "Electric service" means electricity furnished to an ultimate  
13 customer by an electric supplier.

14 (5) "Customer" means any person, firm, corporation, or other entity  
15 receiving or intending to receive electric service at a specific  
16 service entrance.

17 (6) "Service entrance" means the location on the customer's  
18 property where the customer's main disconnect switch, fuses, or other  
19 disconnect equipment exists, and which is intended to provide the means  
20 of cutoff of the supply.

21 (7) "New service entrance" means a service entrance not previously  
22 served with electricity. "New service entrance" does not include:

23 (a) A change, improvement, replacement, enlargement, or change in  
24 location of a service if utilized to serve any service or utilization  
25 equipment previously served with electricity from the former service  
26 entrance;

27 (b) A change in the customer receiving electric service at an  
28 existing service entrance; or

29 (c) A change, enlargement, or other modification of service or  
30 utilization equipment served from an existing service entrance.

31 (8) "Service line" means any single or multiphase electric line of  
32 an electric supplier used for carrying less than sixty-nine KV and used  
33 or capable of use to provide electric service for a customer.

34 (9) "Existing service line" means any electric service line in  
35 existence at the time of the event in question and constructed to  
36 supply a customer that could be lawfully served by that electric  
37 supplier under this chapter. "Existing service line" does not include

1 any service line constructed to obtain an advantage under this chapter,  
2 or to evade its purpose or terms.

3 (10) "Commission" means the Washington utilities and transportation  
4 commission.

5 (11) "Board" means a growth management hearings board established  
6 pursuant to RCW 36.70A.250.

7 NEW SECTION. **Sec. 3.** Disputes between electric suppliers  
8 regarding a potential change in electric suppliers for an existing  
9 service entrance or the provision of electric service to a new service  
10 entrance shall be resolved in accordance with this section.

11 (1) In the event of a dispute involving an investor-owned utility,  
12 a dispute shall be resolved in accordance with the following  
13 procedures:

14 (a) Either electric supplier may petition the commission to  
15 commence an investigation;

16 (b) Upon filing of a petition to commence an investigation, if  
17 either electric supplier objects to the dispute being heard by the  
18 commission, such dispute shall be removed from the commission and  
19 submitted to arbitration pursuant to subsection (3) of this section;

20 (c) The commission shall have the power, after hearing, to resolve  
21 questions in dispute tendered to the commission for determination;

22 (d) Unless the commission orders otherwise based on consideration  
23 of the factors specified in section 4 of this act, in the event that a  
24 new service entrance is requested for premises and more than one  
25 electric supplier is available for service to the property, the  
26 electric supplier whose existing service line is nearest the new  
27 service entrance on the premises to be served shall, subject to the  
28 other applicable provisions of this section, be entitled to serve the  
29 premises;

30 (e) Disputes between electric suppliers regarding a potential  
31 change in electric suppliers for an existing service entrance shall be  
32 resolved by reference to the considerations set forth in section 4 of  
33 this act; and

34 (f) If the commission determines that the disputed issue is  
35 governed by an agreement entered into pursuant to RCW 54.48.030, it  
36 shall issue an order accordingly, directing which of the electric  
37 suppliers shall provide electric service to the new service entrance.

1 (2) In the event of a dispute involving only consumer-owned  
2 utilities, the dispute shall be resolved in accordance with the  
3 following procedures:

4 (a) Either electric supplier may petition the board whose  
5 jurisdiction includes the service area in question to commence an  
6 investigation;

7 (b) The board shall have the power to conduct a de novo hearing, to  
8 establish rules regarding the conduct of such a hearing, and to resolve  
9 questions in dispute tendered to the board for determination;

10 (c) Unless the board orders otherwise based on consideration of the  
11 factors specified in section 4 of this act, in the event that a new  
12 service entrance is requested for premises and more than one electric  
13 supplier is available for service to the property, the electric  
14 supplier whose existing service line is nearest the new service  
15 entrance on the premises to be served, subject to the other applicable  
16 provisions of this section, shall be entitled to serve the premises;  
17 and

18 (d) Disputes between electric suppliers regarding a potential  
19 change in electric suppliers for an existing service entrance shall be  
20 resolved by reference to the considerations set forth in section 4 of  
21 this act.

22 (3) Disputes submitted to arbitration pursuant to subsection (1) of  
23 this section shall be subject to the following procedures:

24 (a) All disputes shall be heard by one qualified arbitrator, unless  
25 the parties agree to use three arbitrators. If three arbitrators are  
26 used, one shall be appointed by each of the disputing parties and the  
27 first two arbitrators shall appoint the third, who shall chair the  
28 panel. Upon the failure of the arbitrators to select a neutral chair,  
29 either party may apply to the federal mediation and conciliation  
30 service or the American arbitration association to provide a list of  
31 five qualified arbitrators from which the neutral chair shall be  
32 chosen. Each party shall pay the fees and expenses of its arbitrator,  
33 and the fees and expenses of the neutral chair shall be shared equally  
34 between the parties;

35 (b) The arbitration hearing must be conducted in a manner that  
36 permits full, fair, and expeditious presentation of the case by both  
37 parties. The arbitration panel is bound by the laws of Washington  
38 state. Parties may be, but are not required to be, represented by

1 attorneys. The arbitration panel may permit discovery to ensure a fair  
2 hearing, but may limit the scope or manner of discovery for good cause  
3 to avoid excessive delay and costs to the parties. The parties and the  
4 arbitration panel shall use all reasonable efforts to complete the  
5 arbitration within three months of the date in which the dispute was  
6 referred to arbitration. The determination of the arbitration panel  
7 shall be final and binding upon both parties, subject to review upon  
8 the application of either party by the superior court in the county in  
9 which the service entrance in dispute is located, with such review  
10 limited to the question of whether the decision of the panel was  
11 arbitrary or capricious; and

12 (c) Determinations involving the designation of boundaries of  
13 adjoining service areas under RCW 54.48.030 shall be subject to  
14 approval by the commission.

15 NEW SECTION. **Sec. 4.** (1) In making determinations pursuant to  
16 section 3 of this act, the commission, board, or arbitrator shall give  
17 consideration to the following:

18 (a) The intent of the legislative policy asserted under RCW  
19 54.48.020;

20 (b) Geographical boundaries of electric suppliers' existing service  
21 lines and the capacity of those lines;

22 (c) Potential safety hazards associated with electric suppliers'  
23 extension of electric service to the customer to be served;

24 (d) Potential visual or aesthetic impacts associated with electric  
25 suppliers' extension of electric service to the customer to be served;

26 (e) Extent to which electric suppliers' extension of electric  
27 service to the customer to be served will involve uneconomic  
28 duplication of facilities;

29 (f) Length of time in which electric suppliers have served in  
30 vicinity of premises to be served;

31 (g) Any agreements between the electric suppliers entered into and  
32 approved pursuant to RCW 54.48.030;

33 (h) Consistency with the orderly development of the region;

34 (i) Natural geographical boundaries;

35 (j) Compatibility with the interests of all customers; and

36 (k) Any other factors deemed relevant by the commission or board.

1 (2) In addition, in making determinations pursuant to section 3 of  
2 this act concerning disputes between consumer-owned utilities, a board  
3 shall give consideration to policies set out in applicable  
4 comprehensive plans, capital facility plans, and development  
5 regulations.

6 NEW SECTION. **Sec. 5.** In making determinations pursuant to section  
7 3 of this act, the commission or board may use alternative dispute  
8 resolution, including arbitration, mediation, or the assignment of  
9 settlement judges to facilitate discussions among the parties.

10 NEW SECTION. **Sec. 6.** If an electric supplier has been granted a  
11 franchise to continue business within an annexed territory pursuant to  
12 RCW 35A.14.900, the provisions of this act shall not apply until the  
13 expiration of that franchise pursuant to RCW 35A.14.900.

14 NEW SECTION. **Sec. 7.** Nothing in this chapter shall be construed  
15 to classify a consumer-owned utility as a public service company under  
16 this title or to include consumer-owned utilities under the authority  
17 of the commission, except to the extent specifically provided in this  
18 chapter.

19 **Sec. 8.** RCW 36.70A.280 and 2003 c 332 s 2 are each amended to read  
20 as follows:

21 (1) Except as provided in subsection (6) of this section, a growth  
22 management hearings board shall hear and determine only those petitions  
23 alleging either:

24 (a) That a state agency, county, or city planning under this  
25 chapter is not in compliance with the requirements of this chapter,  
26 chapter 90.58 RCW as it relates to the adoption of shoreline master  
27 programs or amendments thereto, or chapter 43.21C RCW as it relates to  
28 plans, development regulations, or amendments, adopted under RCW  
29 36.70A.040 or chapter 90.58 RCW; or

30 (b) That the twenty-year growth management planning population  
31 projections adopted by the office of financial management pursuant to  
32 RCW 43.62.035 should be adjusted.

33 (2) A petition may be filed only by: (a) The state, or a county or  
34 city that plans under this chapter; (b) a person who has participated

1 orally or in writing before the county or city regarding the matter on  
2 which a review is being requested; (c) a person who is certified by the  
3 governor within sixty days of filing the request with the board; or (d)  
4 a person qualified pursuant to RCW 34.05.530.

5 (3) For purposes of this section "person" means any individual,  
6 partnership, corporation, association, state agency, governmental  
7 subdivision or unit thereof, or public or private organization or  
8 entity of any character.

9 (4) To establish participation standing under subsection (2)(b) of  
10 this section, a person must show that his or her participation before  
11 the county or city was reasonably related to the person's issue as  
12 presented to the board.

13 (5) When considering a possible adjustment to a growth management  
14 planning population projection prepared by the office of financial  
15 management, a board shall consider the implications of any such  
16 adjustment to the population forecast for the entire state.

17 The rationale for any adjustment that is adopted by a board must be  
18 documented and filed with the office of financial management within ten  
19 working days after adoption.

20 If adjusted by a board, a county growth management planning  
21 population projection shall only be used for the planning purposes set  
22 forth in this chapter and shall be known as a "board adjusted  
23 population projection". None of these changes shall affect the  
24 official state and county population forecasts prepared by the office  
25 of financial management, which shall continue to be used for state  
26 budget and planning purposes.

27 (6) A growth management hearings board may conduct hearings  
28 pursuant to chapter 80.-- RCW (sections 1 through 7 of this act).

29 NEW SECTION. Sec. 9. Sections 1 through 7 of this act constitute  
30 a new chapter in Title 80 RCW.

--- END ---